IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 28760 of 1995

Between:

1. P.Subba Rao S.o Basavaiah,

MIGH 142, Bharatnagar Colony, Hyderabad

2. M.Satyanarayana Murthy

S/o Pattabhiramaiah,

M.I.G. 43, Bharatnagar Colony, Hyderabad

3. Y.Venkatarami Reddy, S/o Y.Lakshmanna

M.I.G. 27, Bharatnagar Colony, Hyderabad

(W.P. dismissed as withdrawn in so far as the 3rd petitioner is

concerned as per court order in WPMP 33116/01 dt.28.12.2001)

4. G.Ramachandra Rao, S/o Swamy

M.I.G. 73, Bharatnagar Colony, Hyderabad

5. P.Chandraiah, S/o Narayana

M.I.G. 3, Bharatnagar Colony, Hyderabad

(W.P. is dismissed as withdrawn in so far as the 5th petitioner is

concerned as per court order dated 30.4.2004 in W.P.M.P.1996/04)

6. K.Sathaiah S/o K.Balaiah

M.I.G. 4, Bharatnagar Colony, Hyderabad

7. M.N.Venkatraman S/o Narasimha Iyer

M.I.G. 5, Bharatnagar Colony, Hyderabad

8. G.Raghavulu S/o Gopaiah

M.I.G. 7, Bharatnagar Colony, Hyderabad

9. K.Chandraiah S/o Butchaiah

M.I.G. 11, Bharatnagar Colony, Hyderabad

(W.P. is dismissed withdrawn in so far as it relates to the 8th and 9th petitioners as per court order in WPMP 541/04 and 343/04)

10.K.Suryaprakasa Rao S/o Chandraiah

M.I.G. 13, Bharatnagar Colony, Hyderabad

11.A.V.Ratnarao S/o Ambaiah

M.I.G. 14, Bharatnagar Colony, Hyderabad

12.B.Somaiah S/o Narasaiah

M.I.G. 15, Bharatnagar Colony, Hyderabad

13.K.V.Ratnaiah S/o K.Chandraiah

M.I.G. 45, Bharatnagar Colony, Hyderabad

14.K.Kumaraswamy S/o K.Ramappa

M.I.G. 45, Bharatnagar Colony, Hyderabad

15.A.Ahmed Khan S/o Mustafa Khan

M.I.G. 43, Bharatnagar Colony, Hyderabad

(W.P. is dismissed as withdrawn in so far as petitioner No.15 is concerned as per court order in WPMP 1906/02 dated 28-2-02)

16.K.Ratna Prasad S/o Bhujanga Rao

M.I.G. 54, Bharatnagar Colony, Hyderabad

17.N.Sudhakar Reddy S/o Hanumantha Reddy

M.I.G. 62, Bharatnagar Colony, Hyderabad

18.G.Krishna Moorthy S/o Suryanarayana

M.I.G. 69, Bharatnagar Colony, Hyderabad

19.P.V.Rathnakar S/o P.Veeraiah

M.I.G. 32, Bharatnagar Colony, Hyderabad

20.K.Paparao S/o Raghavaiah

M.I.G. 93, Bharatnagar Colony, Hyderabad

21.D.Venkatesam S/o Bheemaiah

M.I.G. 103, Bharatnagar Colony, Hyderabad

22.V.Sekhar S/o V.V.Subbarao

M.I.G. 39, Bharatnagar Colony, Hyderabad

23.P.Sreeramachandra Murty

M.I.G. 168, Bharatnagar Colony, Hyderabad

24.S.R.Penumacha S/o P.V.A.Raju

M.I.G. 133, Bharatnagar Colony, Hyderabad

25.V.Suguna W/o V.Suryanarayana

L.I.G. 201, Bharatnagar Colony, Hyderabad

26.D.V.Ratna Rao S/o D.Venkaiah

L.I.G. 177, Bharatnagar Colony, Hyderabad

27.K.Srinivas Reddy S/o K.Konda Reddy

E.W.S.75, Bharatnagar Colony, Hyderabad

28.V.V.Ramana S/o V.Raja Rao

E.W.S. 653, Bharatnagar Colony, Hyderabad

..... PETITIONER

AND

Andhra Pradesh Housing Board

Represented by its Vice-chairman, Gruhakalpa,

M.J. Road, Hyderabad

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or order or direction, declaring that the unilateral action of the respondent-Board in fixing the final cost price of HIGH houses and LIGH and EWSH houses constructed in III phases at Rs.77,200/-, Rs.85,000/-, Rs.95,500/-, Rs.25,000/-, Rs.32,200/-, Rs.37,200/-, Rs.16,600/-, Rs.17,000/- and Rs.19,700/- with regard to petitioners after the period of 12 to 15 years with regard to MIGH 1st phase, 15 years and with regard to other house 12 years, is contrary to regulation 23 of Regulations, arbitrary and unreasonable, unjust and violative of fundamental rights

and constitutional rights guaranteed to the petitioners under Articles 14, 21 and 300-A of the Constitution of India and issue consequential directions to the respondent not to give effect to the final cost price with regard to MIGH, LIGH and EWSH houses constructed in 3 phases for the petitioners, and pass such other order or orders as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: MR.S.RANGA REDDY

Counsel for the Respondent No.: Sri J.Prabhakar

The Court made the following :

JUDGMENT:

1. The petitioners who are allottees of houses constructed by the Andhra Pradesh Housing Board (herein after referred to as 'the Board'), have filed this writ petition questioning fixation of final cost price of MIGH, LIGH and EWSH houses constructed in three phases at Bharatnagar Colony, Hyderabad.

2. As stated in the affidavit, it is the case of the petitioners that the respondent – Board constructed houses of MIGH, LIGH and EWSH categories in three phases in Fatehnagar, presently called Bharatnagar colony. It is stated that the petitioners are allottees of various categories of houses and they were given possession during the years 1981 and 1982, on payment of tentative cost price. It is stated that initially the price was fixed for MIGH houses in phases I, II and III at Rs.51,000/-, Rs.59,000/- and Rs.77,500/- respectively. With regard to LIGH houses, the prices were initially fixed at Rs.21,000/-, Rs.23,500/- and Rs.36,000/- for the three phases respectively. So far as ESWH houses are concerned, the initial price was fixed at Rs.10,400/-, Rs.13,500/- and Rs.16,500/- respectively.

3. When the respondent – Board has finally fixed the price in the year 1994, this writ petition is filed mainly on the ground that in view of Regulation 23(3) of the Andhra Pradesh Housing Board (Allotment, Management and Sale of Middle Income Group Houses) Regulations, 1975 (for brevity 'the Regulations'), there is no power for the Board to fix the final cost price after expiry of two years from the date of allotment of houses. It is their further case that inasmuch as the petitioners were given possession during the years 1981 and 1982, the respondent – Board cannot collect interest on the enhanced cost from the date of allotment.

4. The respondent – Board filed counter affidavit. It is stated that the petitioners 2, 3, 7, 8, 9,10,11, 12, 18, 20, 21, 23, 24, 25 and 27 have not only paid the amounts

demanded by the Board, but also got the their respective houses registered in their favour. It is stated that they have also furnished undertaking that they would withdraw the pending proceedings. It is stated that the cost as fixed by the Board at the time of allotment is only tentative and the final cost shall be arrived at only after completion of all the formalities. It is further stated that the final cost will be worked out on the basis of the land value finally determined, interest paid to the financing agency from whom the amounts were borrowed for the project, amount paid to the contractors, expenditure incurred by the Board and other incidental charges etc., The final cost could not be arrived at within the stipulated time, inasmuch the land acquisition proceedings were carried in appeal, and ultimately and finally the matters were settled in view of the dismissal of the special leave petition by the Supreme Court in the year 1991. It is stated that by entering into agreements, the petitioners have agreed to pay the cost, which would be arrived at finally and having taken possession of the said houses by entering into such agreements, it is not open for them to question the same at this stage.

5. In this writ petition, it is submitted by Sri S.Ranga Reddy, learned counsel appearing for the petitioners that inasmuch as the tentative cost was fixed at the time of allotment of houses during the years 1981-1982 and the petitioners were given possession, and in view of the Regulations framed in exercise of powers 71 of the Andhra Pradesh Housing Board Act, 1956 (hereinafter referred to as 'the Act') the respondent authorities have no jurisdiction to fix the final cost after this length of time. Further it is submitted that in any event the respondents cannot collect interest on the final cost arrived at, from the date of allotment of houses. It is his submission that if the interest is payable, the same has to be taken only from the date of fixation of final cost, but not from the date of initial fixation and allotment. He placed reliance o n **BAREILLY DEVELOPMENT AUTHORITY v VRINDA GUHJARATI** and **M.V.B.SARMA v ANDHTRA PRADESH HOUSING BOARD.**

6. On the other hand, Sri J.Prabhakar, learned standing counsel appearing for the respondent – Board, while admitting that the petitioners were allotted houses and were given possession during the year 1981-1982, submits that the respondent – Board is a Government owned organization and it has constructed the houses only to benefit those persons who are not having dwelling houses of their own and the same is not a profit making organization, but however, they are entitled to collect the cost which was incurred by them for the purpose of constructing the houses. It is

further submitted that all the petitioners having entered into agreements agreeing to pay the final cost as determined by the respondent – Board, now it is not open for them to question the final cost worked out by the Board. It is also submitted that among the petitioners, who are allottees, there are various categories and some of them were given possession on payment of 50% and some of them were given given possession on payment of 20% of the tentative cost. Some of them have paid the entire amount of initial cost and taken possession. However, in view of the legal proceedings initiated by the owners of the lands in various Courts, from whom the land was acquired, final cost could not be arrived at within the stipulated time. Further, it is stated that in normal course, as per the Regulations, the final cost has to be fixed in two years from the date of allotment, but the same could not done for the reasons beyond the control of the Board. It is his further submission that inasmuch as the petitioners have been enjoying the possession, most of them having paid the entire initial cost, they are also liable to pay the interest on the enhanced amount from the date of allotment.

7. With reference to the above submissions, in this case, it has to be seen that the respondent – Board has taken up construction of houses in different phases by acquiring lands belonging to third parties. All the petitioners have entered into agreements with the respondent – Board and categorically agreed to abide by the final cost to be arrived at by the Board. So far as the fixation of final cost is concerned, having regard to various factors viz., legal proceedings initiated on account of land acquisition, which were pending at various stages for enhancement of compensation and further appeals thereon etc., the final cost could not be arrived at. Though as per the Regulations framed under the Act there is a clause, which provides for fixation of sale price within two years from the date of allotment of houses, but for the reasons beyond the control of the Board, the same could not be fixed within the stipulated time. Regulation 23(3) cannot be considered as mandatory. When the Board has not acted in arbitrary manner in fixing the cost price, merely because it has fixed the price after two years period, it cannot be said that they have no jurisdiction to fix the final cost price at all. Even according to the petitioners they were allottees and they were inducted into possession of the house only on fixation of initial cost with a specific undertaking to pay the final cost as arrived at by the Board. In that view of the matter, the terms agreed by the petitioners,

who are allottes, are binding on them for payment of final cost as arrived at by the Board. It is the case of the Board that the final cost could not be arrived at in view of various factors viz., land acquisition proceedings, arbitration proceedings initiated by contractors etc., In view of pendency of the said proceedings, it was not possible for the Board to fix final cost price within the stipulated period of two years as contemplated under Regulation 23(3) of the Regulations. In view of the reasons stated by the Board for fixation of final cost price, it cannot be said that the action of the respondent is illegal or arbitrary. In **BAREILLY DEVELOPMENT AUTHORITY** case (1st supra), relied on by the learned counsel for the petitioners, the Supreme Court has held that the respondents – allottees, after undertaking to pay the enhanced amount and after taking possession of flats, cannot be allowed to raise frivolous contentions to avoid payment to the development authority. Further, in **M.V.B.SARTMA** case (2nd supra), this Court interpreting the very Regulation 23 of the Regulations, has held that the allottees who have agreed to pay escalated sale price cannot question the escalation, when the Board has not acted in arbitrary manner. So, the judgments relied on by the learned counsel for the petitioners are not in support of his argument that in view of the paucity of time, the respondents have no authority to fix the final cost at all. Further, it is to be seen here that many of the petitioners have withdrawn the writ petition and the writ petition was already dismissed as against the respective petitioners and many of the writ petitioners have also paid the entire amount and got the sale deeds registered in their favour.

8. Even with reference to the submission that they are not liable to pay the interest from the date of allotment, in this case it has to be seen that the Board has constructed houses by acquiring lands under the provisions of the Land Acquisition Act and in view of the reference sought by the owners of the land, they are entitled for the enhanced compensation with interest as contemplated under the provisions of the Land Acquisition Act. The interest awarded on the enhanced compensation, payable by the Board is necessarily to be transmitted to the allottees. Further, it is to be seen that the petitioners without paying the final cost had the benefit of allotment and have been enjoying the possession also. In that view of the matter, charging of interest on the enhanced amount from the date of allotment cannot be said to be illegal and arbitrary.

9. For the foregoing reasons, I do not find any merit in this writ petition and the same is accordingly dismissed. No order as to costs.

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To

1. Andhra Pradesh Housing Board

Represented by its Vice-chairman, Gruhakalpa,

M.J. Road, Hyderabad

2. Two C.D. copies